

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt under Subchapter 4, Article 8 of Title 15, Division 3 of the California Code of Regulations (CCR), new Sections 3359.1, 3359.2, 3359.3, 3359.4, 3359.5, 3359.6, and 3359.7 concerning Medical Parole.

In 2010, the Legislature passed and the Governor signed into law Senate Bill (SB) 1399 (Leno), which added section 3550 to the Penal Code (PC). This law provides that: “notwithstanding any other provision of law, except as provided in subdivision (b), [of this penal code] any prisoner who the head physician of the institution where the prisoner is located determines that the prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.”

These regulations are necessary to implement, interpret and make specific the general provisions of PC Section 3550. This regulatory action will provide authority and direction for the proper identification of inmates who meet the criteria to be considered for release on Medical Parole and will ensure that inmates released on Medical Parole are adequately supervised in the community. It will further ensure they are removed from Medical Parole, if their medical condition improves or conditions of their release change posing a risk to the inmate, another person, or public safety.

There are current regulations that govern the supervision of inmates who have completed their term of imprisonment and have been released to parole pursuant to PC Section 3000. In addition, State law and departmental regulations have existed for some time allowing the recall of an inmate’s sentence by the original sentencing court and release to the community with or without parole based on a terminal illness or permanent medical incapacitation (see PC Section 1170(e)). PC Section 3550 creates an intermediate status for inmates who have not completed their term of imprisonment, but who are permanently medically incapacitated, to be released to supervision on Medical Parole. These Medical Parole regulations provide for CDCR to release permanently medically incapacitated inmates into the community to serve the remainder of their State prison sentence on Medical Parole. Upon their release to Medical Parole, permanently medically incapacitated inmates will continue to receive the required medical care in a community health setting since the risk to public safety is significantly decreased by the inmate’s permanent medical incapacitation.

Medical Parole is not the same as the standard parole that occurs when a prisoner completes his or her term of imprisonment. For example, PC Section 3550(h)(1) provides that determinately sentenced inmates who are placed on Medical Parole shall remain on Medical Parole, until they reach their earliest possible release date, “at which time the parolee shall commence serving that period of parole provided by, and under the provisions of, [PC Section 3000].” PC Section 3000 parole is the typical parole that inmates have been serving for decades. Inmates on Medical Parole will transition to parole under PC Section 3000 if they survive until their earliest possible release date. Moreover, prisoners serving an indeterminate term who are placed on Medical Parole must continue to receive life prisoner parole consideration hearings (PC Section 3550(h)(2)). And unlike standard parole, if a Medical Parolee’s condition so improves that “the person no longer qualifies for medical parole, the board shall return the person to the custody of the department” (PC Section 3550(h)). Thus, CDCR requires separate regulations for Medical Parole and cannot rely on the regulations that pertain to standard parole.

CDCR is separately promulgating revised regulations for inmates released pursuant to PC Section 1170(e), Recall of Commitment. Inmates released pursuant to this section can either be permanently medically incapacitated or terminally ill with a life expectancy of six months or less. Under PC Section 1170(e), either the Secretary or the Board of Parole Hearings refers the inmate to the court for resentencing. If the court elects to release the inmate, it could vacate the sentence entirely, place the inmate under parole supervision, or re-sentence the inmate to a shorter term resulting in his or her release to CDCR parole supervision under PC Section 3000. Because of the bases for release, the process for the release, and the potential result of release under PC Section 1170(e) differs from release under PC Section 3550, CDCR requires regulations for Medical Parole separate from its regulations for release under PC Section 1170(e).

CDCR will assist inmates released on Medical Parole into applying for public assistance to help pay for their healthcare costs, which are typically at a lower cost than what CDCR normally pays for such care. The State will pay for any remaining portion of the Medical Parolee's healthcare costs that are not covered by the public assistance program. Additionally, because the inmate's status will change from incarceration to Medical Parole, the California taxpayer will save the costs related to 24-hour medical guarding versus the costs of parole supervision. These regulations save the state of California money and help CDCR reduce the prison population when medically appropriate and safe to do so.

In developing these regulations it was necessary for the Department to interpret in PC Sections 3550(c) and (d), the reference to "within 30 days" that concerns the amount of time that Departmental staff, upon receipt of a recommendation or request for Medical Parole for an inmate, have to process and refer the matter to the Board of Parole Hearings. Since the statute is silent regarding whether the days constitute "calendar" days or "working" days, and also since there was nothing in statute or case law to argue for or against interpreting "days" in state law as "working days", the department adopted a reasonable construction of the statute and specified in its regulations that these days shall be counted as "working" days. This decision was made in collaboration with many programs within CDCR, including California Prison Health Care Services (CPHCS) which is the organization appointed by the federal court to oversee the medical treatment of inmates under the custody of CDCR. The adoption of the 30 "working" days time frame is necessary to meet the Department's operational and procedural needs. By excluding weekends and holidays, it allows the time needed to process each Medical Parole recommendation or request, as mandated in statute and as specified in these regulations. The "working" days adoption is also necessary as this process involves the collaboration of various programs within the CDCR which includes staff from CPHCS, the Division of Adult Institutions, and the Division of Adult Parole Operations.

Lastly, it was determined that placement of these regulations in Title 15, Division 3, should be placed in Subchapter 4, General Institution Regulations, under Article 8, Medical and Dental Services; and not under Subchapter 6, Adult Parole. The reasoning is that the Medical Parole process is initiated by institution medical staff. The primary distinction for this form of parole is the "medical incapacitation" of the inmate. It is the responsibility of the inmate's primary care physician to refer an inmate for Medical Parole, if he or she meets the medical eligibility criteria. As such, it is consistent and appropriate to incorporate the medical parole regulations into the section that speaks to inmate health care. Additionally, inmates who are approved for Medical Parole are not parolees under Penal Code Section 3000 and continue to serve their current prison term in the community. Inmates on medical parole are supervised by the CDCR to ensure public safety is not compromised.

The Department has made an initial determination that no reasonable alternatives considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department must determine that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

3000. Definitions.

Section 3000 is amended to add the definition of Medical Parolee. This new definition is necessary in order to better describe the Medical Parole status and to distinguish its statutory origin in PC Section 3550 from a similar program, Recall of Commitment based on PC Section 1170 (e) and from the period of parole a person typically must serve at the completion of a term of imprisonment pursuant to PC Section 3000.

At the end of Section 3000 in the note, authority and reference citations, PC Section 3550 is added as a reference.

Subchapter 4. General Institution Regulations.

Article 8. Medical and Dental Services

Under Article 8, new Sections 3559.1, 3559.2, 3559.3, 3559.4, 3559.5, 3559.6 and 3559.7 are adopted.

3559.1. Medical Parole General Policy.

In general, this Section is necessary in establishing and clarifying what these regulations are based upon, specifically what is considered a "permanently medically incapacitated inmate" and the factors by which a determination is made by medical and custody staff, as explained in more detail below:

Subsection 3359.1(a) provides the PC authority for these regulations and a general description of "permanently medically incapacitated" as defined in (a)(1) of this Section, and the general criteria for a Medical Parole referral. Included in this criteria, the phrase "requiring 24-hour care" is necessary to describe the constant level of medical care that incarcerated inmates that are potentially eligible for Medical Parole are receiving and will continue to need once on Medical Parole. Also for explanation, the Chief Medical Officer and Chief Medical Executive positions are the highest ranking positions in an institution's medical program.

This language is necessary as a logical beginning and foundation of these regulations and serves as a lead into the text that will make specific the general eligibility criteria established in PC Section 3550, and as specified in Subsections 3359.1(a)(1)-(a)(4).

Note: As explained on page two of this Initial Statement of Reasons, the reference to "working days" is made and is necessary to allow sufficient time to process each Medical Parole request.

Subsection 3359.1(a)(1) establishes the medical criteria for the eligibility of Medical Parole. This is necessary to make specific the provisions of PC Section 3550(a) concerning permanent medical incapacitation as described in statute for an inmate to be considered eligible for Medical Parole. This includes the need to make specific the general reference to “activities of basic daily living.” As defined in this text, activities of basic daily living are, “breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation” which are the criteria that CDCR or appointed physicians will use to evaluate an inmate’s degree of incapacitation. For additional explanation, activities of daily living (ADLs) are activities related to a person’s ability to perform the physical aspects of self maintenance and personal care. They include bathing or showering, eating and drinking, using the toilet, and getting from bed to a chair, chair to a bed (transferring). If a person has difficulty performing any of these activities by himself/herself, or cannot perform these activities without special equipment, they have a limitation in this activity.

ADL terminology and various assessment scales are widely used in the USA by nursing and medical personnel to measure the ability of a person to function independently, and to evaluate the types of health care services that a person might need. Most models of health care delivery in the USA include ADL evaluation in their assessment of patients. ADL assessment is also used by the Centers for Medicare and Medicaid Services and all levels of skilled nursing facilities and assisted living facilities to measure how much assistance and equipment a person will need to support their basic daily needs.

It should be noted that this criteria may differ from the criteria currently provided in the PC Section 1170(e) Recall of Commitment process. Recall of Commitment includes a terminal medical condition as one avenue to eligibility while Medical Parole does not permit a terminally ill inmate to be released under Medical Parole, unless he or she is also permanently medically incapacitated

Most of the described activities of basic daily living are self-explanatory; however, two require additional explanation. “Transferring” as briefly described above, refers to a patient’s ability to self-ambulate and move their body from place to place, such as from the bed to a wheelchair or from a wheelchair to the toilet seat. “Elimination” refers to an inmate’s ability to eliminate bodily waste from their body, which may include the patient’s ability to have regular bowel movements, and if the patient is incontinent.

Subsections 3359.1(a)(2)-(a)(4) establishes in the regulations and makes specific the other statutory criteria besides medical incapacitation, pursuant to PC Section 3550, that an inmate must meet to be eligible for Medical Parole. This language is necessary to ensure clarity and understanding to inmates, inmates families or representatives, and departmental staff the specific criteria beyond medical incapacitation needed to be considered for Medical Parole. This language also helps decrease the threat to public safety as a result of the placement of inmates on Medical Parole in community settings by setting sentencing parameters for consideration for Medical Parole.

Subsections 3359.1(b)-(b)(3) establishes in the regulations the authorized persons that may initiate a request for Medical Parole on behalf of an inmate pursuant to PC Section 3550. This text is also necessary to help ensure that an inmate’s consideration for Medical Parole would not solely be dependent on the inmate’s primary care physician, but also on the initiative of other parties identified in, or intended by, the statute.

Subsection 3359.1(c) provides that persons, other than an inmate’s primary care physician, who are authorized in PC Section 3550 to request medical parole on an inmate’s behalf, may do so once every 90 days. This language provides clarity on how often Medical Parole may be requested by individuals who are not the inmate’s primary care physician. This language ensures that the request

process is not overused but still provides a reasonable timeframe that is short enough to accommodate any changes in the inmate's medical condition that would materially affect their eligibility.

Subsection 3359.1(d) provides the Board of Parole Hearings must first determine that the conditions under which an inmate would be released would not reasonably pose a threat to public safety. This language is necessary to help ensure the public's safety upon the release of these inmates to parole, as mandated by statute. Records and documents described in the following regulations form the basis for the Board's decision with regard to public safety.

3359.2. Medical Parole Processing.

New text in this Section is presented in an organized step-by-step format that provides the process by which inmates, who are found to be permanently medically incapacitated, shall be processed for possible Medical Parole. This language is necessary in order to make specific the general provisions of PC Section 3550, and to establish a standardized departmental process for staff to follow. This process also helps to ensure that only potentially eligible inmates are processed for Medical Parole consideration. Medical Parole is a new parole status. CDCR employees must have clear guidance on how these individual's eligibility shall be reviewed and evaluated.

PC Section 3550 states the head physician of the institution must refer a request for Medical Parole consideration to the Board of Parole Hearings, within 30 days of receiving the recommendation from the inmate's primary care physician. Therefore, the intent of this language is to also ensure compliance with timeline requirements that involve staff review and response pursuant to PC Section 3550, while at the same time allowing sufficient time for staff to complete the task at hand and respond.

In general, Medical Parole requests will be processed through the department within the 30 days as specified by statute. As previously explained in this ISOR, this will be "working days. Of the many steps involved in processing these requests, two will be completed simultaneous to other steps, so not every step requires its own dedicated days to complete, as some steps will occur concurrently to others. As an example, eight days will be shared between the inmate's caseworker and (CPHCS) staff. Within the eight days allotted, the inmate's caseworker will prepare an evaluation report for the Classification and Parole Representative's review, and CPHCS staff will identify appropriate medical placement for the inmate upon release for the Division of Adult Parole Operation's review.

For specific Subsections 3359.2(a)-(i) below, additional descriptions and explanations are provided.

Subsection 3359.2(a) provides how the inmate's primary care physician who has identified the inmate for consideration of Medical Parole, makes a referral to the Chief Medical Officer (CMO) or Chief Medical Executive (CME) for review. Both CMO and CME positions can be considered as head medical administrators for review.

This subsection also incorporates by reference into the regulations, the new CDCR Form 7478 (12/10), Medical Parole Form, which is the initial document that will help drive the review and approval process through the Department. Also incorporated by reference into the regulations is CDCR Form 7385-MP (2/11), Medical Parole Authorization for Release of Information. This is a necessary document that will be utilized by the Department for an inmate's release of information for Medical Parole consideration (e.g., medical, dental, mental health, other, etc.). This authorization is required pursuant to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which protects information relative to an individual's past, present, or future physical or mental health or condition, the

provision of health care to the individual, and past, present, or future payment for the provision of health care to the individual. An inmate's medical information must be available to certain Department staff not only for the initial determination of eligibility for Medical Parole, but for future reviews by CDCR and the Board of Parole Hearings' (BPH) staff to determine if the inmate's condition continues to meet the medical eligibility criteria, while the offender is on Medical Parole. The inmate's medical information will also be disclosed to participants present at the Medical Parole hearing and to the public, via the Medical Parole hearing transcripts.

Both the CDCR Form 7478 and CDCR Form 7385-MP have been included in this regulation package and copies have been made available for public review.

Subsection 3359.2(b) specifies that the CMO or CME shall review the CDCR Form 7478 in determining an inmate's medical eligibility for Medical Parole based on the medical case factors, as described in Subsections 3359.1(a)(1)-(2). As previously described, the CMO or CME is an institution's highest ranking medical staff member and is empowered to make medical decisions.

This language is necessary to ensure the Medical Parole process moves along in a timely manner. It is also when the CMO or CME receives the CDCR Form 7478 for review that the timeline begins for medical and institution staff to process the case to the Board of Parole Hearings within the 30 working days.

Subsection 3359.2(b)(1) provides the process if the CMO or CME does not concur with the primary care physician's evaluation and recommendation for Medical Parole. The CMO or CME will document the reasons for denial of referral for Medical Parole on the CDCR Form 7478, and return the form to the primary care physician within three working days. The CMO or CME is required to notify the inmate and/or inmate's designee of the reason for the denial in writing within 30 working days. This language is necessary to make specific the step permitted in PC Sections 3550(c) and (d), on the process the CMO or CME must follow, if he or she does not concur with the primary care physician's evaluation. This also allows the inmate or the individual requesting Medical Parole on their behalf, to know the specific reasons the inmate does not meet the standards for "medical incapacitation" from the medical executive at the inmate's institution.

Subsection 3359.2(b)(2) provides the process if the CMO or CME does concur with the primary care physician's recommendation. The CMO or CME will document their agreement with the Medical Parole recommendation on the CDCR Form 7478 and forward the form to a Classification and Parole Representative (C&PR) within three working days. This language is necessary as a directive to staff and to also ensure the process meets the timeline requirements.

Subsection 3359.2(c) provides that the C&PR will review the medically eligible inmate's Central File to ensure the inmate is not condemned or serving a sentence of life without the possibility of parole as either one of these sentencing circumstances statutorily excludes an inmate as being eligible for Medical Parole. This step is necessary to help ensure that only potentially eligible inmates will be considered for Medical Parole by the BPH. To help clarify in this ISOR who the C&PR is, the C&PR is the employee at the institution that serves as that institution's liaison with releasing boards and parole staff (section 3000, Title 15).

Subsection 3359.2(c)(1) provides that the C&PR will document on the CDCR Form 7478 if the inmate is not statutorily eligible for Medical Parole, based on a review of the inmate's Central File, as defined in Title 15, Section 3000, and forward the CDCR Form 7478 to the CMO or CME within three working days. The CMO or CME is required to notify the inmate and/or inmate's designee of the reason for the

denial in writing within 30 working days, pursuant to PC Sections 3550(c) and (d). This language is necessary as a directive to staff to ensure that correct reporting procedures and timelines are followed.

Subsection 3359.2(c)(2) specifies the process if the C&PR determines the inmate is statutorily eligible for Medical Parole. The C&PR will forward the CDCR Form 7478, and attach the information to the CDCR Form 7478 outlined in Subsections 3359.2 (d)(10)-(15), to the CMO or CME within three working days and request an evaluation report from the inmate's caseworker. The inmate's caseworker is the correctional counselor assigned to gather, organize, analyze and record information necessary for the proper classification and parole planning for the inmate. The casework performed by the correctional counselor is used to properly assess the inmate's housing and educational/vocational assignments in the institution setting, based on the inmate's specific case factors. These documents are required by two departmental program areas, DAPO and the Division of Adult Institutions, in the medical parole request process. The documents are specific to the inmate's case factors and are required by DAPO to ensure the inmate's placement in the community is commensurate with their individual case factors (i.e., commitment offense, criminal history, institutional adjustment, etc.). For instance, DAPO must know if an inmate is a Penal Code Section 290 registrant to properly assess if the inmate's planned placement in the community complies with current statutory restrictions. The documents must also be included with the original evaluation report completed by the caseworker (correctional counselor), as described in (d) below, for the C&PR and Warden's review, as described in (e) below, and will be part of the complete packet forwarded to the Board of Parole Hearings for their review.

Subsection 3359.2(d) provides that the inmate's caseworker will complete an evaluation report and submit it to the inmate's C&PR for further processing within five working days. The evaluation report includes the information outlined in Subsections 3359(d)(1)-(d)(15) which are the necessary background and official information that will ensure that all required information pertaining to the inmate's case factors has been collected for a referral of Medical Parole to the Board of Parole Hearings to utilize in determining the risk the inmate's release may pose to public safety. Most of the criteria is self explanatory, but additional explanation is provided for the following:

- 3359.2(d)(4) is necessary because the inmate's entire criminal history (juvenile and adult) is relevant in determining an inmate's overall risk to public safety. The statute provides that an inmate shall be granted Medical Parole if the Board of Parole Hearings determines the conditions under which the inmate would be released would not reasonably pose a threat to public safety. An inmate's criminal history does not preclude an inmate from being considered for Medical Parole; however, the information is necessary for the Board of Parole Hearings to appropriately assess any public safety risk should the inmate be placed on medical parole.
- 3359.2(d)(5) is necessary because the Board of Parole Hearings must be provided all pertinent information relative to the inmate's case factors. In case other law enforcement agencies (which includes the federal Immigration and Customs Enforcement Agency) have an active or potential hold, warrant, or detainer against the inmate, and the inmate is released on medical parole, appropriate notifications must be given to these agencies.
- 3359.2(d)(9) is necessary to ensure the Board of Parole Hearings has victim notification information which is contained in the inmate's Central File. The information is incorporated in the Medical Parole Evaluation Report to ensure the Board of Parole Hearings complies with the requirements of Marsy's Law and the requirements of Senate Bill 1399.

Subsections 3359.2(d)(1)-(d)(15) outlines the specific information and attachments the caseworker's evaluation report will contain. This text is necessary to ensure that required and necessary information is provided to the Board of Parole Hearings that will assist in the Board's review of the inmate when

considering the risk to public safety upon the inmate's release, and to help ensure that public safety is thoroughly considered and not compromised.

Subsection 3359.2(e) specifies that the C&PR will review the caseworker's evaluation report and forward it to the Warden or Chief Deputy Warden of the institution within three working days. This level of review helps to determine an inmate's suitability for recommendation to the Board of Parole Hearings for consideration for Medical Parole.

Subsection 3359.2(f) provides that the Warden or Chief Deputy Warden shall review and sign the evaluation report and forward to the Classification Services Unit within three working days. This text is necessary to provide within this Medical Parole process, a timeframe for prompt processing of the request by the institution head or their second in command.

Subsection 3359.2(g) specifies the step within the Medical Parole process, that the CMO or CME, upon receipt of the original CDCR Form 7478, as noted in Subsection 3359.2(c)(2), and the attachments outlined in Subsections 3359.2(d)(10)-(15), shall forward the documents, along with the completed CDCR Form 7385-MP, to the California Prison Health Care Services office so medical staff can identify a suitable placement location for the inmate. This language also establishes that once medical staff identifies a suitable placement location for the inmate, staff will document the information on the CDCR Form 7478 and forward all the documents listed in this Subsection to the Division of Adult Parole Operations' (DAPO) Re-entry Unit within eight working days. This is necessary because the inmate's medical placement in the community may influence the level of parole supervision needed, which may include parolee residence restrictions and electronic monitoring, and the general and special conditions of parole that may be applied.

Subsection 3359.2(h) specifies the step within the Medical Parole process that staff shall follow. Text provides that upon receipt of the original CDCR Form 7478, CDCR Form 7385-MP, and attachments, DAPO Re-Entry Unit staff will forward the CDCR Form 7478 to the appropriate parole unit for the assigned parole agent to review the recommended placement plan. This is necessary to establish that DAPO maintains a Re-Entry Unit in Region I, Region 2, Region 3 and Region 4 for the purpose of determining Medical Parolee placement in the appropriate parole unit in each of the four regions.

Text also establishes that within eight working days, the parole agent will document their review on the CDCR Form 7478 and forward a copy to California Prison Health Care Services staff along with a copy of the CDCR 1515-MP (02/11), Conditions of Medical Parole, which is incorporated by reference into the regulations, noting approval or disapproval of the proposed placement and any general or special conditions of medical parole. The CDCR Form 1515-MP is the form utilized to provide the inmate his or her conditions of Medical Parole. The CDCR Form 1515-MP is included in this regulation package and a copy has been made available for public review.

The assigned parole agent shall also forward the original CDCR Form 7478, CDCR Form 7385-MP, and CDCR Form 1515-MP to the Classification Services Unit. This step is necessary because the Classification Services Unit has the primary responsibility to forward the entire Medical Parole packet to the Board of Parole Hearings, and track the status of the requests for the Department.

Subsection 3359.2(h)(1) specifies that if the recommended placement plan is not approved, the parole agent shall document the reason for the disapproval on the CDCR 7478 and return it to the California Prison Health Care Services staff. This language is necessary to specify the step in the process that allows California Prison Health Care Services staff to consider an alternative placement location for medical treatment for the inmate.

Subsection 3359.2(i) provides that the Classification Services Unit shall review the CDCR Form 1515-MP, CDCR Form 7478, CDCR 7385-MP, evaluation report, and attachments for completeness and forward all as a complete packet to the Board of Parole Hearings for their review within three working days of receiving the entire packet. This language is necessary so that the Board of Parole Hearings receives all the information needed to make an informed and timely decision on the inmate's Medical Parole.

Section 3359.3. Pre-Release Process.

New text in this Section establishes the Medical Parole pre-release process when Board of Parole Hearings (BPH) approves Medical Parole for an inmate. This text is presented in an organized step by step format, is necessary to continue the establishment of a standardized process that is to be followed by staff, and also ensures that required timelines, if applicable, for review and response are met. Medical Parole is a new type of parole status and Department staff need clear guidance and direction on how such cases should be processed.

For specific Subsections 3359.3(a)-(d) below, additional descriptions and explanations are provided.

Subsection 3359.3(a) provides that upon BPH approval of Medical Parole, the C&PR shall ensure that a Medical Parole packet is processed and that the required Penal Code notifications are completed. The C&PR will then forward the Medical Parole packet to the supervising parole unit within five working days. This language is necessary specify the staff responsible for the processing of the packet and ensure that required notifications are completed.

Subsection 3359.3(b) provides for clarification, the responsibilities of the Parole Agent, if the inmate is already housed in the community, and is not available to institution staff who would normally obtain the information and inmate's signature on these documents, if the inmate was housed in the institution. This language is necessary as a directive to staff and to ensure that parole release documents are completed.

Subsection 3359.3(c) specifies that the assigned Parole Agent shall contact the local law enforcement agency to ensure that required Penal Code registrations are completed. This language ensures that public safety is met and that proper parolee registration(s), required by statute, will occur even if a Medical Parolee is physically unable to do so.

Subsection 3359.3(d) provides that the inmate's Central File shall be forwarded to the designated institution with responsibility for the oversight of the records of the Medical Parolee. This language is necessary as the institution who originally housed the inmate before Medical Parole was granted may not be the same institution responsible for the inmate's records, while he or she is released on Medical Parole; therefore this language ensures that a designated institution will handle all files related to Medical Parole to ensure and maintain consistency with the monitoring of case records functions.

Section 3359.4. Classification, Case Records, and Life Prisoner Processes.

Subsection 3359.4(a) specifies that an inmate's classification processes, as provided in Title 15, Division 3, shall be suspended while the inmate is released on Medical Parole. This language is necessary because inmates who are granted Medical Parole will not be subject to the annual classification reviews or program reviews as these housing and institution program placement decisions are irrelevant while the inmate is not in custody.

Subsection 3359.4(b) provides that inmates sentenced to an indeterminate prison term shall continue to have life parole consideration hearings. This language is necessary because the Medical Parole legislation did not toll the inmate's right to have parole consideration hearings, as required by PC Section 3041, et. seq. Also, to clarify responsibilities, text provides what institution will be responsible for processes related to the life prisoner parole consideration hearings.

Subsection 3359.4(c) provides that Case Records functions will be managed by the institution designated by the Director, Division of Adult Institutions. This provision is necessary to monitor eligibility for an inmate's release from Medical Parole to standard parole, pursuant to PC Section 3000.

Section 3359.5. Medical Parole Supervision.

New text in this Section establishes the provisions for the supervision of a Medical Parolee in the community. This language continues the establishment of a Medical Parole standardized process that is to be followed by staff, and to also ensure that required timelines, if applicable, for review and response are met. This text also ensures that applicable parole supervision process and procedure requirements are followed. Medical Parole legislation did not address or relieve the Department of many of its parole supervision responsibilities.

For specific Subsections 3359.5(a)-(b)(5) below, additional descriptions and explanations are provided.

Subsection 3359.5(a) provides that the assigned Parole Agent will conduct a face to face contact with the inmate, pursuant to the provisions of Section 3504, at the placement location and conduct an initial interview, if possible. This is a necessary step in order to obtain necessary information, as described directly below that will help to assess inmates assigned to Medical Parole and for the purpose of determining the appropriate level of supervision. This language is also necessary as a directive to staff.

Subsections 3359.5(a)(1)-(a)(2) specifies two items that the Parole Agent should attain from the initial interview with the inmate. This language is necessary to help ensure public safety by having current data on each Medical Parolee. The two items are as follows:

- Digital photograph. This is necessary to ensure the latest identification of the inmate is on file.
- CDCR Form 1650-MP (02/11), Medical Parole Initial Interview/Contact. This form is used to document the initial interview, and once completed, provides relevant, helpful information regarding the medical parolee such as name, name and address of facility or residence where the Medical Parolee is located, means of support, any prescription medications, identification information, physical description, etc. The form also allows the Parole Agent to complete other relevant information related to the interview and the Medical Parolee.

The CDCR Form 1650-MP has been incorporated by reference into the regulations, is included in this regulation package and a copy has been made available for review.

Subsection 3359.5(b) provides that inmates released on Medical Parole shall have general and/or special conditions of Medical Parole, and the conditions will be in effect until the Medical Parolee transitions to standard parole. This language is necessary to help ensure public safety by setting conditions of parole for Medical Parolees, despite the permanent medical incapacitation of the parolee. PC Section 3550 (h) states in part that "the board or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to medical parole supervision." Medical Parolees or their

families, friends or representatives cannot, for example, change their treatment and residency placements unilaterally. Such movement must first be approved by the Department.

Subsection 3359.5(b)(1) specifies that in the event the Medical Parolee does not comprehend, or is otherwise not capable of signing the CDCR Form 1515-MP, the conditions of Medical Parole will be imposed. PC Section 3550(h) states in part that “the board or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to medical parole supervision.” In the interest of public safety, this language ensures that conditions of Medical Parole shall be imposed and enforced.

Subsection 3359.5(b)(2) provides in the event the inmate refuses to sign his or her conditions of Medical Parole, the case will be referred to the Board of Parole Hearings. To explain why this language is necessary, standard parole, pursuant to PC Section 3000, requires that if a person who has completed a term of imprisonment refuses to sign the conditions of parole, parole shall be revoked for a period of six months (PC Section 3060.5). Because a person considered for Medical Parole may be so medically incapacitated that he or she poses no risk to public safety if released to the community, this Subsection will allow the Board of Parole Hearings to consider the person's risk to public safety, notwithstanding his or her refusal to sign conditions of Medical Parole. In addition, PC Section 3550 provides “[n]otwithstanding any other provision of law, the board or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to medical parole supervision. . . .” Thus, unlike standard parole where a person shall not be released from custody unless they sign their conditions of parole, the Board of Parole Hearings may place a person on Medical Parole and impose conditions of Medical Parole, regardless of whether the person agrees to those conditions.

Subsection 3359.5(b)(3) provides that inmates released to Medical Parole who are required to register as sex offenders pursuant to PC Section 290, will not be required to submit to continuous electronic monitoring, until the Medical Parolee commences serving parole under the provisions of PC Section 3000. This subsection, for clarification, is necessary because inmates released to Medical Parole, who are required to register pursuant to PC Section 290, do not have the statutory requirement to submit to continuous electronic monitoring. The statutory requirement for continuous electronic monitoring shall only occur when the Medical Parolee reaches his or her parole date, pursuant to PC Section 3000. Nonetheless, PC Section 3550(h) allows the Department to add electronic monitoring as a condition of parole for Medical Parolees on a case-by-case basis. This provision is also necessary as a directive to staff to ensure statewide consistency in the application of the conditions of Medical Parole.

Subsection 3359.5(b)(4) provides when a special condition of Medical Parole imposed by DAPO no longer applies to the Medical Parolee, only a parole unit supervisor or higher level staff person may remove or modify the special condition of parole. This language is necessary in order to show the parole staff whose positions are authorized to make such decisions. This text is also necessary as a directive to staff to ensure the conditions of Medical Parole are imposed and enforced consistently statewide, as appropriate.

Subsection 3359.5(b)(5) provides that when a special condition of Medical Parole is imposed by the Board of Parole Hearings, only the Board of Parole Hearings may remove or modify the special condition of Medical Parole. This language is necessary because PC Section 3550(h) allows either the Board of Parole Hearings or DAPO to impose reasonable conditions of parole and there must be a mechanism to relieve the Medical Parolee of a condition or modify it as circumstances change. Since the agency that placed the condition will be in the best position to determine whether the condition it placed should be modified or lifted, the regulation specifies that the placing agency shall have the authority to modify or lift the special condition. This text is also necessary as a directive to staff.

Section 3359.6. Removal from Medical Parole

Subsections 3359.6(a)-(a)(2) provides that the inmate's treating physician, any other physician selected by the Board of Parole Hearings (BPH), or the parole agent may make a recommendation to BPH to return a Medical Parolee to the custody of the Division of Adult Institutions (DAI) under the circumstances provided in Subsections 3359.6(a)(1)-(a)(2).

This text, necessary for clear meaning and as a directive to staff, specifies the current responsibilities for making a recommendation for removal from Medical Parole based on the following criteria:

- The inmate's treating physician or other physician selected by the BPH has made a determination that his or her condition has improved to the extent that the Medical Parolee no longer is "medically incapacitated" and no longer qualifies for Medical Parole. This is necessary to ensure that only those persons eligible for Medical Parole receive Medical Parole. This step in the process is permitted by PC Section 3550(h), which states in part, "If the board determines, based on that medical examination, that the person's medical condition has improved to the extent that the person no longer qualifies for medical parole, the board shall return the person to the custody of the department."
- If the Parole Agent has made a determination that the Medical Parolee is a threat to himself or herself, another person, or to public safety, or there has been a significant change in his or her conditions of release. This inclusion of the Parole Agent and his or her determination of the criteria stated in this text is necessary in order to ensure that public safety is not compromised. Also, assaultive behavior by the Medical Parolee, unauthorized movement of the parolee from their treatment placement, and other violations of their conditions of parole may trigger a return to custody or alternative parole placement.

Subsection 3359.6(b) provides the next step in the removal process by specifying that the Parole Agent shall contact the Director, DAI, or designee, and request that the Medical Parolee be placed on suspended Medical Parole status, pending review by BPH to return the Medical Parolee to the custody of DAI or placement at an alternative location. This language also ensures that proper levels of review are followed.

Subsection 3359.6(c) provides for clarification and as directive to staff, the final step in the removal process that specifies that the parole agent shall submit a CDCR Form 2219-MP (02/11), Medical Parole Status Change, which is incorporated by reference into the regulations, to the Chief Deputy Commissioner, BPH, with a recommendation for removal from Medical Parole or placement at an alternative location. The CDCR Form 2219-MP is included in this regulation package and a copy of the form has been made available for public review.

3359.7. Non-Citizen Inmates.

Section 3359.7 specifies that an inmate who is not a citizen of the United States may be released to Medical Parole, provided he or she is released to federal immigration authorities pending deportation. This language is necessary to affirm the jurisdiction and responsibility of the federal government over non-citizen felons who are released from State incarceration.